IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No. 2314 of 1995

DATE OF DECISION: 6 .8.2007

Varinderjit Singh ...Appellant

VERSUS

Tajinder Singh and others ...Respondents

CORAM

HON'BLE MR.JUSTICE PERMOD KOHLI

PRESENT: Mr.L.S.Goraya, Advocate for appellant

Mr.Suman Jain, Advocate and
Mr.Saurav Mohunta, Advocate
for respondent no.3.

Permod Kohli,J.

This is claimant's appeal against the award dated 17.5.1995 passed by the Motor Accident Claims Tribunal, Jalandhar whereby the claim petition filed by the claimant has been dismissed. Claimant, Appellant herein, filed a claim petition (MACT No.26 of 1993) before the Motor Accident Claims Tribunal, Jalandhar alleging therein that on 25.3.1992 at about 2.30 p.m. he was on duty and was walking on Ladowali Road, Jalandhar on his left hand side

of the road from Railway Crossing towards B.S.F. Chowk, when a tanker bearing Registration No.DIG/2511 came from B.S.F. Chowk side and hit the claimant/appellant. It is stated that the Tanker was being driven rashly and negligently by its driver and without blowing any horn the tanker came on the right hand side of the road and its front right hand side hit the claimant/appellant. The claimant sustained injuries and his left foot was completely crushed. It is also mentioned that the driver of the vehicle ran away from the spot. The claimant was brought to Civil Hospital, Jalandhar wherefrom he was shifted to Grand Hospital, Grand Trunk Road, Phagwara and he was operated upon there. According to the claimant, he was admitted as an indoor patient at Grand Hospital, Grand Trunk Road, Phagwara firstly from 25.3.1992 to 6.4.1992 and again from 11.5.1992 to 13.5.1992. At the time of the accident, the claimant was 25 years of age and was employed as a Constable in Punjab Police. His salary at the relevant time was Rs.2500/- per month. It is alleged that the claimant incurred Rs.20890/- on his treatment and also paid Rs.15,000/- as fee to the doctors who treated him. It is further alleged that the Claimant suffered permanent disability due to amputation of his left foot. He also claims to be an Athlete and a Volleyball player and because of amputation of his left foot, his sports career is completely wiped off.

Respondents no.1 and 2 i.e. the owner and the driver of the offending Tanker filed a joint written statement. In the written statement filed, it is stated that the vehicle was not being driven

rashly and negligently. While explaining the occurrence, it is stated that in fact the driver was driving the vehicle normally on his extreme left hand side of the road. It is further mentioned that the accident took place when the petitioner negligently tried to cross the road from the street leading to his residence. It is also mentioned that the claimant did not see towards his left hand side before crossing the road which resulted in the accident. Respondent no.3-Insurance Company denied the allegations in a routine manner and also disputed its liability on the plea that the driver of the vehicle was not having a valid driving licence at the time of the accident nor the vehicle was having a valid route permit and fitness certificate. It disputed its liability on the ground of alleged breach of terms and conditions of the Insurance Company.

On the basis of the pleadings of the parties, the Tribunal framed as many as four issues. For the purposes of present appeal, issue no.1 is relevant which reads as under:-

> "1.Whether the claimant received injuries in a motor vehicle accident on 25.3.1992 on Ladowali Road, Jalandhar, on account of rash and negligent driving of a tanker bearing registration No.DIG/2511 by respondent no.1? OPA"

In order to prove this issue, the claimant himself entered into the witness box and also produced other witness Arvind Sharma. The claimant narrated the circumstances leading to the accident as alleged in the claim petition. However the witness of the claimant, namely, Arvind Sharma gave a different version of the occurrence.

According to this witness, the claimant was running on scooter, when the Tanker hit the scooter and the left foot of the claimant got struck in the wheel of the offending tanker which dragged him for some distance. Besides this witness of occurrence, the claimant also produced Dr. Hari Singh Jaswal who stated that the claimant was treated by him at his Hospital at Phagwara from 25.3.1992 to 6.4.1992. The Tribunal concluded that the claimant has failed to prove the rash and negligent act of the driver of the vehicular accident involving the offending vehicle. The Tribunal also observed that it appears that the claimant has received injuries at some other place. Issue no.1 was accordingly decided against the claimant/appellant. Consequently, the claim petition has been dismissed.

I have heard learned counsel for the parties at length and perused the paper-book.

No doubt the other witness of the occurrence, namely, Arvind Sharma gave a different version of the occurrence. However, the place of occurrence, the number and details of the offending vehicle and causing of the injuries to the claimant/appellant have been established. He deviated from the statement of the claimant only in respect of the circumstances whereunder the accident is said to have occurred. The Tribunal concluded that the witness is planted one. Assuming it to be so, the question arises whether the claimant sustained injury in the accident involving the offending vehicle. The claimant has given his version of the occurrence in the claim petition as also in his own statement made before the Tribunal

during the enquiry. It is pertinent to note the stand taken by the owner and driver of the vehicle in the written reply to the claim petition which has been reproduced by the Tribunal in the impugned award. The averments made in the written statement are significant. In the written statement, respondents no.1 and 2 admitted the accident, the place at which the accident took place as also the injuries caused in the accident, by stating that "at the time of accident, respondent no.1 was neither driving his vehicle rashly nor negligently. In fact, he was driving normally on his extreme left hand side of the road. The accident took place when the petitioner negligently tried to cross the road from the street leading to his residence (Emphasis supplied). The petitioner did not see towards his left hand side before crossing the road". This statement made in the written reply is a clear admission of the occurrence i.e. the accident involving the offending vehicle. It makes no difference whether the other witness produced by the claimant has supported his version of the story or not. Admission of the driver and owner regarding the involvement of the vehicle in the accident at the place specified in the claim petition and stated by the claimant during his examination and the injuries sustained by the claimant are sufficient to establish that the claimant sustained injuries in the accident caused by the offending tanker driven by respondent no.1. In view of this clear admission on the part of respondents no.1 and 2, opinion of the Tribunal that there is no material on record to link the injuries sustained by the claimant to the accident involving offending vehicle is nothing, but a perverse finding. The Tribunal

gave undue weightage to the statement of the witness and ignored the admission made by respondents no.1 and 2 with total impunity and ignorance of legal position. The Tribunal also referred to the daily diary summoned from the Police Station to arrive at a conclusion that the claimant was not on duty at the time of accident and that he did not sustained injuries. Whether he was on duty or not is not a relevant factor to sustain the claim. These inferences drawn by the Tribunal are also based upon total mis-appreciation of the daily diary. Assuming there was no entry in the daily diary regarding the duty of the claimant or the injuries, absence of such an entry itself cannot be a ground to arrive at a conclusion that the accident did not occur at all. Particularly, when the driver of the offending vehicle himself admitted accident, though, denied his act of driving the vehicle in a rash and negligent manner. Observations of the Tribunal in this respect also are not sustainable. From the award impuged, it appears that the Tribunal has acted as a criminal court where the occurrence was required to be proved beyond any shadow of doubt. There is sufficient material on record to establish the accident. The Police registered an FIR. Claimant's allegations regarding involvement of the offending vehicle in the accident are admitted by the driver of the offending vehilce which by itself is sufficient to prove accident involving offending vehicle. Statement of doctor who treated the appellant and appellant's admission in the Hospital cannot be ignored and establish that the appellant sustained injuries in the accident.

Apart from the factual position noticed here-in-above, it is

relevant to mention that under the Scheme incorporated under the Motor Vehicles Act relating to the enquiries by the Motor Accident Claims Tribunal, the proceedings are summary in nature and strict rules of evidence are not applicable. The job of the Tribunal is to ascertain as to whether the accident has been caused out of use of motor vehicle. This fact has been admitted by the driver and owner of the vehicle and thus, no elaborate enquiry was needed in this regard.

In view of the above circumstances, findings on issue no.1 are hereby set aside and it is held that the claimant received injury in the motor vehicle accident on 25.3.1992 involving Tanker No.DIG-2511 driven by respondent no.1 and owned by respondent no.2. Issue no.3 has already been decided by the Tribunal in favour of the appellant/claimant. The case is accordingly remitted back to the Motor Accident Claims Tribunal, Jalandhar for its decision on issue no.2. In view of long pendency of this appeal, the Tribunal is directed to decide the claim petition within three months from the date of receipt of a certified copy of this order.

(PERMOD KOHLI)
JUDGE

6 .8.2007
MFK

NOTE: Whether to be referred to the Reporter or not:YES /NO